

Before the Karnataka Electricity Regulatory Commission, Bangalore

Dated this the 8th day of January 2004

Present

- | | | |
|----------------------------------|----------|-----------------|
| 1. Sri. Philipose Matthai | - | Chairman |
| 2. Sri. H.S. Subramanya | - | Member |
| 3. Sri. S.D.Ukkali | - | Member |

CaseNo.OP- 29/2003

Between

M/s Environmental Support Group,
S-3, Rajashree Apartments,
18/57, 1st Main Road,
S.R.K. Gardens, Jayanagar,
Banneraghatta Road,
Bangalore - 560 041.

Petitioner

(By Sri.Sunil Dutt Yadav, Adv.)

and

Managing Director,
BESCOM,
K.R.Circle,
Bangalore - 560 001

Respondent

(By Sri S.S.Nagananda, Adv.)

The petitioner claims to be a Non Governmental Organization and functions from the address given above. This organization sent a letter dated 10th June 2003, addressed to the Consumer Advocate of the Commission. The letter, *interalia*, stated as follows:

" On Monday June 2nd, a voltage spike hit our building sometime between 10:30 am and 12:30 pm. We noticed the spike when our UPS, which is connected to about 5 computers in our office, broke down with electrical sparks and loud sound. At the same time, an extension-cum-surge protector connected to the UPS also sparked and destroyed one of the computers. The surge-protector and the computer were burned and the office was full of smoke. The motherboard in the computer was completely damaged and the computer had to be replaced.

The UPS was also badly damaged, although we tried to get it repaired, it is still not working properly."

The Commission considered this letter as a petition to the Commission and initiated a *suo motu* case. A notice was issued to the petitioner and respondent to present their case in the public hearing.

2. The petitioner and respondent have put in appearance and were represented by their respective Counsels. The respondent has opposed the petition and has filed a statement of objection denying responsibility for the incident and also for the payment of compensation for the damages alleged by the petitioner. In a nutshell, the following are the objections:

(i) The petitioner is not a registered consumer, and hence the petition is not maintainable.

(ii) The petitioner's installation is in the residential area, and he is using it for unauthorized commercial purposes. Therefore he is not entitled to any relief.

(iii) Every installation has to be provided with mini circuit breaker (MCB) and Earth Leakage circuit breaker (ELCB) to protect it from surges. Damage, if caused due to ill/non-maintenance of such protective equipments does not entitle the petitioner any relief.

(iv) The surge on 2.6.2003, was caused by a falling tree in the vicinity. There is no negligence/lapse on the part of the respondent.

3. The petitioner has rebutted these arguments in his rejoinder. He contends that the organization is charitable in character and has received concessions as such under various acts and has to be treated as such for the electricity tariff. He further contends that the premise was equipped with protective devices and in addition UPS was also installed which also serves as a protector against the surges. He adds that the institution is within the definition of a consumer and has a right to claim compensation from the licensee.

4. We have fully heard both the counsels and considered various issues that were agitated before us. Sri Sunil Dutt Yadav, learned Counsel for the petitioner argued that the surge was the result of falling of a frond on the 11 kV

line which short circuited the 440 volts line which run on the same pole. He stated that there was no guard between these two lines to prevent them coming into contact with each other following any event. He produced a copy of log sheet maintained by the respondent to show that the surge was the result of falling of a coconut frond. He stressed the point that the events like falling of fronds can be anticipated and cannot be equated to 'an act of God.' He relied upon the decision of the Hon'ble Supreme Court in the case *Divisional Controller, KSRTC v. Mahadev Shetty and another* (2003 AIR SCW 3797), wherein the expression 'act of God' is explained. He also relied upon the decision of the Karnataka State Consumer Disputes Redressal Commission, Bangalore in the case *KEB v. H.S.Sitaram* (I (2000) CPJ 508), wherein it is held that a duty is cast upon the licensee to protect supply lines from any source that may hamper, fluctuate, or cut off power supply. He contended that section 57 of the Electricity Act 2003 prescribes that the Commission may specify the standards of Performance of the licensee and also determine the compensation to the affected party for the failure of the licensee to maintain the standards prescribed. He also pointed out that the licensee may approach the state Government for the removal of offending tree or buildings which may interfere with the overhead lines under section 68 (5) of the Electricity Act, 2003. He stated that the Commission is fully empowered under section 94 of the Electricity Act to deal with the present case and pass orders granting relief.

5. The learned Counsel for the Respondent reiterated the grounds of objections raised in his statement of objections. He contended that the petitioner is not a registered consumer and is not entitled for any relief. He maintained that certain obligations are cast upon the consumers and they are required to install and maintain in good condition certain protective devices like MCB and ELCBs to guard against any surges. He contended that the petitioner has not produced any evidence in support of his case and that mere academic discussion will not entail him any compensation. He requested that the petition may be dismissed with costs.

6. We have carefully considered the various points urged before us. It is an admitted fact that there was a surge in the 440 V supply lines due to falling of a coconut frond on the 11 kV lines which resulted into 11kV lines coming into contact with supply lines causing short circuit and a resultant surge of voltage in the supply lines. The respondent states that the surge was due to falling of a tree in the vicinity, which was beyond his control, and there was no negligence or lapse on his part. The respondent indirectly attributes the event on natural forces and an act of God. The petitioner has relied upon the case law *The Divisional Controller KSRTC v Mahadeva Shetty & another* reported in 2003 AIR SCW 3797. In the said case the Hon'ble Supreme Court has explained the meaning of the expression 'act of God'. The Hon'ble Court observed -

" The expression "act of God" signifies the operation of natural forces free from human intervention, such as lightning, storm etc. It may include such unexpected occurrences of nature as severe gale, snowstorms, hurricanes, cyclones, tidal waves and the like. But every unexpected wind and storm does not operate as an excuse from liability, if there is a reasonable possibility of anticipating their happening. An act of God provides no excuse unless it is so unexpected that no reasonable foresight could be presumed to anticipate the occurrence, having regard to the conditions of time and place known to be prevailing at. For instance, where by experience of a number of years, preventive action can be taken. Lord Westbury defined act of god (*damnum fatale* in Scotch Laws), as an occurrence, which no human foresight can provide against and of such human prudence, is not bound to recognize the possibility. It appears to be the nearest approach to the true meaning of act of God. Lord Blancaburgh spoke of it as "an irresistible and unsearchable providence nullifying the human effort."

Falling of mature fronds from the coconut tree is an expected natural occurrence and an anticipated event of routine nature. It cannot be considered as an act of God. The licensee cannot simply point the accusing finger towards the Almighty and escape from the responsibility.

7. The provisions of law relating to overhead lines may be examined in this context. Sub sections (5) and (6) of Section 68 of the Electricity Act 2003 are as under:

"(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely

to interrupt or interfere with, the conveyance of transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under sub section (5), an Executive Magistrate or authority specified under that subsection shall, in the case of any tree in existence before placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation - For the purposes of this section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant."

Section 185 (1) and (2) (b) Of the Electricity Act 2003 are as below:

"(1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910(9 of 1910), the Electricity (Supply) Act, 1948, (54 of 1948) and the Electricity Regulatory Commissions Act, 1998, (14 Of 1998) are hereby repealed.

(2) * * * * *

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made there under shall have effect until the rules under section 67 to 69 of this Act are made,

This implies that the Indian Electricity Rules, 1956 framed under the Indian Electricity Act 1910 are still in force, since the State Government have not made the rules under section 68 of the Electricity Act 2003. Rule 30(1) of the Indian Electricity Rules 1956, on general safety requirements, is as under:

" The supplier shall ensure that all electric supply lines, wires, fittings, and apparatus belonging to him or under his control which are on a consumer's premises are in a safe condition and in all respects fit for supplying energy, and the supplier shall take due precautions to avoid danger arising on such premises from such supply lines, wires, fittings and apparatus."

8. It is clear from the above that the law places heavy responsibility on the licensee and makes him duty bound to protect the supply lines. The licensee is expected to take due precautions to avoid danger to the supply lines from any source. Failure to take such precautions will certainly entail the licensee of consequential damages. Therefore we do not accept the contention of the respondent that there is no negligence/lapse on his part that caused the alleged loss. The respondent has failed to anticipate the event and consequently failed to take precautionary measures to prevent its occurrence.

9. The respondent has raised the issue of the petitioner not being the registered consumer. The petitioner's installation is being supplied with electricity and that makes him a consumer under the law. The argument that the installation was not provided with safety instruments like ELCB and MCB is not supported with any evidence. The petitioner contends that he did use the safety apparatus. There is no reason why we should disbelieve the petitioner. The petitioner is a NGO and is granted the status of a charitable trust under the Income Tax Act, according to the copy of the certificate produced by the petitioner. The petitioner has produced a certificate to this effect. Therefore we reject the plea of the respondent that the petitioner is engaged in commercial operations and is not entitled to any relief.

10. The petitioner has produced the copies of bills relating to repair charges to his damaged equipments. He has revised the cost of damages to Rs. 32,935/- through his memo-dated 28.8.2003. The respondent has not raised any objections to this amount but on the contrary contended that the petitioner has made academic discussions of his case and has not presented the facts. We do not agree with the contention of the respondent. We feel that the respondent ought to have taken this case more seriously, instead of making light hearted averments.

11. This is one of the many cases of frequent occurrence, which could have been avoided, if the licensee were to care for the responsibilities cast on him by the law. Many such cases do not see the light of the day because of 'grin and bear it' attitude of majority of consumers. It is for this anxiety that the laws relating to the protection of life and property of the consumers of electricity, should not remain dormant in the statute books, we took up this case suo motu.

12. In view of the discussions in the earlier paragraphs, we allow the application before us and direct the respondent to compensate the damages to the tune of Rs. 32, 935/- within 90 days from the date of this order.

13. The petition is **allowed**. Ordered accordingly. The parties will bear their own costs.

(Philipose Matthai)

(H.S.Subramanya)

(S.D.Ukkali)